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March 15, 2004

Mr. Anthony J. Como
Manager, Electric Power Regulation
Office of Fossil Energy
U.S. Department of Energy
1000 Independence Ave., S.W.
Washington, D.C. 20585

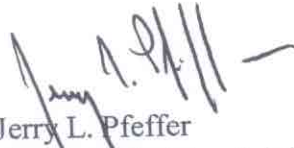
RE: Application for Authorization to
Export Electricity; Docket EA04-290

Dear Mr. Como:

Enclosed are an original and 15 copies of an Application for export authorization submitted by Ontario Power Generation Inc. ("OPG"). In addition please find a check for \$500.00 payable to the Treasurer of the United States.

Please date-stamp and return the four additional copies to the messenger. If you have any questions about the application, please feel free to contact me.

Respectfully submitted,


Jerry L. Pfeffer
Energy Industries Advisor

Enclosures

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

ONTARIO POWER GENERATION INC.

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)

Docket No. EA04-

APPLICATION OF
ONTARIO POWER GENERATION INC.
FOR AUTHORIZATION TO EXPORT
ELECTRIC ENERGY TO CANADA

Ontario Power Generation Inc. ("OPG") submits this Application requesting all necessary approvals and authorizations by the Department of Energy ("DOE") under Section 202 of the Federal Power Act, 16 U.S.C. Section 824(a) and Section 205.300 *et seq.* of the Rules of the DOE, 10 C.F.R. Part 205 (2001), for blanket authorization to export electricity from the United States to Canada. OPG respectfully requests that this authorization be approved expeditiously.

I. Introduction

OPG is an Ontario corporation having its principal place of business at Toronto, Ontario, Canada. OPG operates a number of power generating facilities in Ontario, some of which are owned by OPG and some by various subsidiary corporations. It does not own or control any transmission or distribution assets, nor does it have any franchised service area in the United

States or Canada. OPG was formed pursuant to Section 48 of the Electricity Act, 1998 and was incorporated under the Business Corporations Act (Ontario). All of the shares of OPG are held in the name of the provincial Government of Ontario. All of its generation assets were previously owned by Ontario Hydro, the former government-owned utility providing generation, transmission and certain distribution services in Ontario.¹

Prior to restructuring taking place in Ontario pursuant to the Energy Competition Act, 1998, Ontario Hydro and its affiliate Ontario Hydro Interconnected Markets Inc. (collectively, the "Ontario Hydro Companies") were granted export authorizations from the DOE in Docket Nos. EA-198 and EA-199. *See Ontario Hydro Interconnected Markets*, Order No. EA-198 (March 1, 1999); and *Ontario Hydro*, Order No. EA-199 (March 1, 1999). Both Orders authorized the export of electric energy to Canada using certain existing transmission facilities at the United States border with Canada. Thereafter, the Ontario Hydro Companies requested that DOE cancel the export authorizations (pursuant to 10 C.F.R. § 205.308) due to the pending electric restructuring in Ontario and changes in the Ontario Hydro Companies' business objectives.

On May 30, 2002, OPG obtained export authorization from DOE on behalf of its Ontario Energy Trading International Corp. ("OETI") subsidiary

¹ As described, *infra*, Ontario Hydro received export authorization from DOE in Docket No. EA199.

in Docket No. EA-265. OETI was established to serve as the vehicle for OPG's power marketing and trading activities in the U.S. market.² In order to provide OPG itself with the needed flexibility to negotiate wholesale power transactions, which in some cases may result in OPG taking title to power in the U.S., and in response to the growing linkages and connectivity between bulk power markets in the U.S. and Canada, OPG presently requests similar export authorization on its own behalf.

II. Application for Authorization to Transmit Electric Energy to Canada

As part of its ongoing wholesale power business in Ontario, OPG periodically purchases power from U.S. market participants where such transactions provide both economic and reliability benefits. Under current arrangements, such wholesale transactions provide for transfer of title to OPG at the border. The generic authorization requested herein would allow OPG to take title to power in the U.S. and to export such power into Canada using the transmission facilities of certain public utilities, and the facilities of the Bonneville Power Administration ("BPA"), as set forth in Exhibit C.

² OETI received FERC approval to make market based sales of energy and capacity in FERC Docket No. ER02-1021. *Ontario Energy Trading International Corp.*, 99 FERC 61,039 (2002), Order Denying Rehearing, 100 FERC ¶61,345 (2002), appeal pending, No. 03-1162 (D.C. Cir).

III. Information Pursuant to 10 C.F.R. § 205.302 et seq.

The following information is supplied in accordance with the requirements set forth in Section 205.302 *et seq.* of DOE's regulations:

- (a) The exact legal name of the applicant:

Ontario Power Generation Inc.

- (b) The exact legal name of all partners:

None.

- (c) The name, title, post office address, and telephone number of the person to whom correspondence in regard to the application shall be addressed:

Andrew Barrett
Vice President, Regulatory Affairs
Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Canada
(416) 592- 4463
(416) 592-8519 (fax)

Jerry L. Pfeffer
Energy Industries Advisor
Skadden, Arps, Slate, Meagher
& Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111
(202) 371-7000
(202) 393-5760 (fax)

- (d) The state or territory under the laws of which the applicant is organized or incorporated, or authorized to operate. If the applicant is authorized to operate in more than one state, all pertinent facts shall be included:

OPG is incorporated under the laws of the Province of Ontario, Canada. Neither the articles of incorporation nor the by-laws of OPG contain any restrictions that would prohibit the conduct of business as contemplated in this application, either in Canada or the U.S.

- (e) The name and address of any known Federal, State or local government agency which may have any jurisdiction over the

action to be taken in this application and a brief description of that authority:

The Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

The FERC regulates the rates for the transmission and sale for resale of electric energy in interstate commerce. Any sales for resale by OPG of wholesale power to market participants in the U.S. would require prior FERC approval. There are no current plans to request such approval.

- (f) A description of the transmission facilities through which the electric energy will be delivered to the foreign country, including the name of the owners and the location of any remote facilities:

The electric energy will be transmitted through the international transmission facilities of various public utilities and the other entities listed in Exhibit C, pursuant to their respective Presidential Permits. Exhibit C sets forth the entities which operate those facilities and the Presidential Permits under which the facilities were constructed and maintained.

- (g) A technical discussion of the proposed electricity export's reliability, fuel use and system stability impact on the applicant's present and prospective electric power supply system. Applicant must explain why the proposed electricity export will not impair the sufficiency of electric supply on its system and why the export will not impede or tend to impede the regional coordination of electric utility planning or operation:

OPG understands that arrangements to transmit energy to the international border require it to enter into transmission service agreements with transmission providers, and that such agreements are separate and apart from the granting of this Application. The proposed transmission of electric energy by OPG across the transmission system of such providers will not impair the sufficiency of the United States electric supply because the power exported (net of any transmission losses) will only be on transmission lines with available capacity.

OPG will make all necessary commercial arrangements and will obtain all other regulatory approvals required to effect any power exports from the U.S. In particular, OPG will (i) schedule each transaction with the appropriate

transmission utility, control area operator and/or ISO in accordance with good utility practice and applicable market rules, and (ii) obtain transmission from available transmission capacity over the existing facilities listed in Exhibit C.

The DOE must evaluate the reliability impacts of the export of the electricity to Canada. As DOE has noted, it "has always used a flexible approach in determining the information necessary to evaluate reliability impacts for specific export proposals." *PacifiCorp*, Order No. EA-150, mimeo at 3 (1997). When appropriate, DOE may utilize the reliability analyses performed in the most recent export authorization proceedings for the transmission systems listed in Exhibit C for the grant of export authority to Canada. *Id.* OPG's exports to Canada will not impair the sufficiency of the United States electric supply because such exports will come from energy and/or capacity not needed to supply the requirements of native load or wholesale customers. Moreover, OPG does not have a franchised utility obligation to provide a specific service in any United States service territory.

Any proposed export of electricity to Canada by OPG should not burden regional transmission facilities, or adversely affect the regional coordination of electric utility planning or operations. OPG will transmit the power through existing transmission lines and in accordance with the transmitting utilities' existing capabilities and operating procedures. DOE previously has found that existing technical studies are adequate to support such authorization "provided the maximum rate of transmission for all exports through a border system does not exceed the previously authorized limit of the system." *PacifiCorp*, mimeo at 3. Because OPG does not own transmission border facilities, it will obtain transmission service at the border with Canada from the owners or operators of the facilities listed in Exhibit C, pursuant to the filed FERC tariffs and DOE license authorizations governing service over those facilities. Thus, OPG will comply with all existing reliability and technical standards set forth in such licenses. To the extent such licenses cap the amount of power to be exported, OPG shall comply with the restrictions imposed on each transmission system. Any OPG power exports to Canada will use the international transmission facilities which have been issued authorizations by the DOE. *See, e.g., Virginia Electric and Power Co., Dominion Energy, Inc.*, Order No. EA-224, mimeo at 2 (2000); *PacifiCorp*, mimeo at 3. Thus, by complying with the FERC requirements and export limits imposed by DOE on the aforementioned transmission facilities, any OPG exports would not adversely affect transmission facilities or impede the coordinated use of transmission facilities in the U.S.

In addition, to the extent OPG exports over BPA's international transmission ties, OPG agrees to abide by the transmission limits DOE recognizes for such facilities. See *PacifiCorp*, mimeo at 4.

OPG recognizes that the DOE attaches general conditions to the approval of export applications, and OPG agrees to abide by these conditions. OPG requests blanket approval for exports according to the terms contained in this Application.

- (h) Signature and verification under oath by an officer of the applicant having knowledge of the matters set forth therein:

This application has been verified under oath by an officer of the Applicant, with knowledge of the matters set forth herein. The verification is attached to this Application as Exhibit G.

IV. Exhibits Pursuant to 10 C.F.R. § 205.303

In accordance with 10 C.F.R. § 205.303, the required exhibits are attached to this Application.

A. Exhibit A is not applicable because OPG has no specific transactions for the export of power into Canada. From time to time OPG will enter into agreements with third parties that involve transmission service related to the export of electric power and such agreements will conform to the filed rates and tariffs of the relevant transmission providers.⁴ To the extent necessary, OPG requests blanket authority to enter into transmission agreements for the export of electricity to Canada under applicable rules.

B. Exhibit B (signed opinions of U.S. and Ontario counsel) are attached.

C. Because OPG does not own transmission or distribution facilities or have an "electric system," OPG sets forth the specific transfer points and

⁴ For example, OPG currently has two transmission reservations on the MISO OASIS for approximately 126 MW of transfer capability, but there are no specific wholesale power transactions linked to these transmission reservations.

Presidential Permits OPG likely will use to export the electricity as identified in Exhibit C.

D. Exhibit D (designation of power of attorney by applicant having principal office outside of the United States) is attached.

E. Exhibit E (statement of corporate relationship between applicant and any other person which in any way relates to the control or fixing of rates for the purchase, sale of transmission of electric energy) is not applicable to OPG's application since OPG has no such relationships to any such entity in the U.S.

F. Exhibit F is inapplicable because there is no current foreign purchaser of electric energy relevant to this application.

G. Exhibit G (verification) is attached.

V. **Request for Expedited Action and Effective Date**

The Applicant respectfully requests the DOE to expeditiously consider and grant the request for blanket export authority at the earliest possible date in order to allow it to export power to Canada. Having such blanket authority is a condition precedent for effectuating any sales which involve OPG exporting from the U.S. into the Ontario power market and thus facilitating economic and reliable service on both sides of the border.

Further, given that an affiliate of OPG already holds the requisite export authority and the fact that OPG clearly qualifies for such authority on its own behalf, OPG submits that there is good cause to make the authorization effective on the earliest possible date.

For the reasons stated herein, DOE should grant OPG authorization to export electric energy to Canada.

Andrew Barrett
Vice President, Regulatory Affairs
Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Canada
(416) 592- 4463
(416) 592-8519 (fax)

Respectfully submitted,



Jerry Pfeffer
Energy Industries Advisor
Skadden, Arps, Slate, Meagher
& Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111
(202) 371-7000
(202) 393-5760 (fax)

On Behalf of Ontario Power
Generation Inc.

March 15, 2004

Electricity Agreements

Not Applicable.

See attached opinion letters from U.S. and Ontario Counsel.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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March 15, 2004

Office of Fossil Energy
U.S. Department of Energy
1000 Independence Ave., S.W.
Washington, D.C. 20585

Attn: Mr. Anthony J. Como
Manager, Electric Power Regulation

RE: Authorization for Export of Electricity

Gentlemen:

We have acted as special counsel to Ontario Power Generation Inc., a corporation organized under the laws of the Province of Ontario, Canada (the "Company"), with respect to certain matters in connection with the preparation of the application before the Department of Energy ("DOE") for authorization to export electric energy from the United States to Canada, dated March 9, 2004 (the "Application"). This opinion is being delivered pursuant to 10 C.F.R. § 205.303 (b) of the DOE's regulations.

In connection with this opinion, we have examined and relied on originals or copies, certified or otherwise identified to our satisfaction a draft of the Application in the form to be filed with the DOE, including a signed verification executed by an officer of the Company, attesting to the accuracy of the contents of that Application. As to any facts material to the opinions expressed herein which we did not independently establish or verify, we have relied upon statements and representations of officers and other representatives of the Company, including the facts set forth in the Application. We also have examined originals or copies, certified or otherwise identified to our satisfaction, of such records of the Company, and such agreements, certificates of public officials, certificates of officers or other representatives of the Company and others, and such other documents, certificates and records as we have deemed necessary or appropriate as a basis for the opinion set forth herein.

In our examination, we have assumed the legal capacity of all natural persons, the genuineness of all signatures and endorsements, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified, conformed or photostatic copies and the authenticity of the originals of such latter documents. In making our examination of documents executed or to be executed by parties other than the Company, we have assumed that such parties had or will have the power, corporate or other, to enter into and perform all obligations thereunder and have also assumed the due authorization by all requisite action, corporate or other, and execution and delivery by such parties of such documents and the validity and binding effect thereof.

For purposes of our opinions in paragraph (2) below, we also have assumed that the execution and delivery by the Company of the Application and the performance by the Company of its obligations thereunder do not and will not violate, conflict with or constitute a default under: (i) any agreement or instrument to which the Company is a party or to which the Company's property is subject; (ii) any law, rule or regulation to which the Company is subject (except that we do not make the assumption set forth in this clause (ii) with respect to Applicable Laws (as defined below)); (iii) any judicial or regulatory order or decree of any governmental authority; or (iv) any consent, approval, license, authorization, or validation of, or filing, recording or registration with any governmental authority.

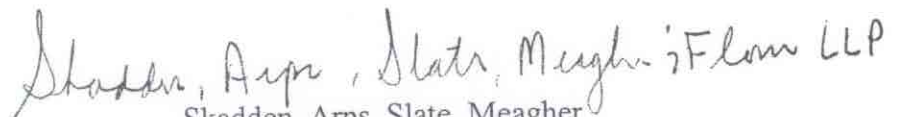
For purposes of this opinion the term "Applicable Laws" means those laws, rules and regulations of the United States of America which in our experience are normally applicable to applications of the type contemplated by the Application, but without our having made any special investigation concerning any other laws, rules or regulations; provided, however, that the term "Applicable Laws" does not include the statutes, rules and regulations relating to "Environmental Laws". For purposes of this opinion, the term "Environmental Laws" means any and all applicable federal, state, international and local laws and regulations relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants.

We express no opinion as to the laws of any jurisdiction other than the Applicable Laws of the United States of America. Insofar as the opinions expressed herein relate to matters governed by laws other than those set forth in the preceding sentence, we have assumed, but without having made any independent investigation that such laws do not affect any of the opinions set forth herein. The opinions herein are based on laws in effect as of the date hereof, which laws are subject to change with possible retroactive effect.

Based upon the foregoing and subject to the limitations, qualifications, exceptions and assumptions set forth herein, we are of the opinion that the export of electricity to Canada by the Company as contemplated by the Application does not violate or conflict with, or result in any contravention of, any Applicable Law.

This opinion is rendered solely for the benefit of the DOE and any agency of the United States Government in connection with the filing and review of the Application and may not be relied upon by any other party or for any other purpose without our express written consent.

Very truly yours,


Skadden, Arps, Slate, Meagher
& Flom LLP

March 11, 2004

Office of Fossil Energy
U.S. Department of Energy
1000 Independence Ave S.W.
Washington, D.C. 20585

Attention: Mr. Anthony J. Como
Manager, Electric Power Regulation

Dear Sir:

Re: Application by Ontario Power Generation Inc. (the "Applicant") to the U.S. Department of Energy ("DOE") to permit the Applicant to Export Electricity into Canada from the United States of America (the "Application")

I address this opinion to the DOE solely in my capacity as Vice-President Law and General Counsel of the Applicant, not in my personal capacity and without personal liability, in connection with the above noted matter.

A. Documents:

In connection with the opinions expressed herein, I have reviewed the following documents, copies of which are attached:

- (i) Certificate of Status dated March 11, 2004 with respect to the Applicant and issued by the Ontario Ministry of Consumer and Business Services;
- (ii) Officer's Certificate of the Applicant dated March 11, 2004 with respect to certain factual matters; and
- (iii) The Application to be submitted by the Applicant.

B. Assumptions:

For the purposes of giving this opinion I have assumed the genuineness of all signatures, the authenticity of all documents, agreements and instruments submitted to me as originals and the conformity with originals of copies submitted to me.

C. Qualifications:

The opinions given herein are subject to the following limitations and qualifications:

- (i) I am a member of the bar of the Province of Ontario and accordingly I do not purport to be an expert on or to be qualified to express any opinion herein concerning any law other than the laws of the Province of Ontario and the laws of Canada applicable therein in force on the date hereof.
- (ii) This opinion letter is rendered solely in my corporate capacity.
- (iii) The opinions herein expressed are made as of the date of this opinion letter only, and I assume no obligation to update or supplement such opinion to reflect any fact or circumstance that may hereafter come to my attention or any changes in law that may hereafter occur or become effective.

D. Opinions:

Based upon and subject to the foregoing, and the qualifications hereafter expressed, I am of the opinion that with respect to the Applicant:

- 1. The Applicant is a corporation duly amalgamated, organized and validly existing under the laws of the Province of Ontario, with full corporate power and authority to execute and deliver, and to perform its obligations under, the Application.
- 2. The exportation of electricity into Canada from the United States of America by the Applicant, in the manner contemplated in the Application, does not contravene, conflict with or constitute a breach of any statute or regulation in the province of Ontario, or any federal statute or regulation of Canada applicable therein which is applicable to the Applicant.

This opinion is effective as of the date hereof and is intended for use only by the addressee in connection with the Application and is not to be circulated, referred to or relied upon by any other persons or used for any other purpose without my express written authorization.

ONTARIO POWER GENERATION INC.



Adèle S. Malo
Vice President Law and General Counsel

Request ID: 005918135
Demande n° :
Transaction ID: 23144867
Transaction n° :
Category ID: CT
Catégorie :

Province of Ontario
Province de l'Ontario
Ministry of Consumer and Business Services
Ministère des Services aux consommateurs et aux entreprises
Companies and Personal Property Security Branch
Direction des compagnies et des sûretés mobilières

Date Report Produced: 2004/03/11
Document produit le :
Time Report Produced: 09:48:59
Imprimé à :

CERTIFICATE OF STATUS ATTESTATION DU STATUT JURIDIQUE

This is to certify that according to the records of the Companies and Personal Property Security Branch

D'après les dossiers de la Direction des compagnies et des sûretés mobilières, nous attestons que la société

ONTARIO POWER GENERATION INC.

Ontario Corporation Number

Numéro matricule de la société (Ontario)

001554803

is a corporation incorporated,
amalgamated or continued under
the laws of the Province of Ontario.

est une société constituée, prorogée ou née
d'une fusion aux termes des lois de la
Province de l'Ontario.

The corporation came into existence on

La société a été fondée le

JANUARY 01 JANVIER, 2003

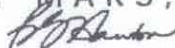
and has not been dissolved.

et n'est pas dissoute.

Dated

Fait le

MARCH 11 MARS, 2004



Director
Directrice

The issuance of this certificate in electronic form is authorized by the Director of Companies and Personal Property Security Branch
La délivrance du présent certificat sous forme électronique est autorisée par la Directrice de la Direction des compagnies et des sûretés mobilières.

OFFICER'S CERTIFICATE

OF

ONTARIO POWER GENERATION INC.

The undersigned, Richard Dicerni, Acting President, hereby certifies that he is the Acting President of Ontario Power Generation Inc., an Ontario corporation (the "Company"), and further certifies on behalf of the Company as follows:

1. No dissolution or liquidation proceedings have been commenced or are contemplated by the Company.
2. The Company has the corporate power and authority to export electricity to Canada in accordance with the terms of the Application.

Ontario Power Generation Inc.

By:



Richard Dicerni
Acting President

Dated as of March 11, 2004

General System and Detailed Facility Maps

<u>Owner</u>	<u>Location</u>	<u>Voltage</u>	<u>Presidential Permit No.</u>
Basin Electric	Tioga, ND	230-kV	PP-64
Boise Cascade	International Falls, MN	115-kV	PP-96
	International Falls, MN	6.6-kV	PP-39
Bonneville Power Administration	Blaine, WA	2-500-kV	PP-10
	Nelway, WA	230-kV	PP-36
	Nelway, WA	230-kV	PP-46
Eastern Maine Electric Coop.	Calais, ME	69-kV	PP-32
International Transmission Company	St. Clair, MI	345-kV	PP-230
	Marysville, MI	230-kV	PP-230
	Detroit, MI	230-kV	PP-230
	St. Clair, MI	345-kV	PP-230
Joint Owners of Highgate Project	Franklin, VT	120-kV	PP-82
Long Sault, Inc.	Massena, NY	2-115-kV	PP-24
Maine Electric Power Company	Houlton, ME	345-kV	PP-43
Maine Public Service Company	Limestone, ME	69-kV	PP-12
	Fort Fairfield, ME	69-kV	PP-12

	Aroostock County, ME	138-kV	PP-29
	Madawaska, ME	2-69-kV	PP-29
Minnesota Power, Inc.	International Falls, MN	115-kV	PP-78
Minnkota Power Cooperative, Inc.	Roseau County, MN	230-kV	PP-61
New York Power Authority	Ft. Covington, NY	765-kV	PP-56
	Massena, NY	2-230-kV	PP-25
	Niagara Falls, NY	2-345-kV	PP-74
	Devils Hole, NY	230-kV	PP-30
Niagara Mohawk Power Corp.	Devils Hole, NY	230-kV	PP-190
Northern States Power Company	Red River, ND	230-kV	PP-45
	Roseau County, MN	500-kV	PP-63
Northern States/Xcel	Rugby, ND	230-kV (Not Built)	PP-231
Vermont Electric Coop. Co.	Derby Line, VT	120-kV	PP-66
Vermont Electric Transmission Co.	Norton, VT	<u>±</u> 450-kV (DC)	PP-76